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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,379	01/09/2002	Takashi Kondo	245402004000	5474
25227 7590 04/11/2008 MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 400 MCLEAN, VA 22102			EXAMINER PHAM, HUNG Q	
			ART UNIT 2168	PAPER NUMBER
			MAIL DATE 04/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/040,379	<b>Applicant(s)</b> KONDO ET AL.	
	<b>Examiner</b> HUNG Q. PHAM	<b>Art Unit</b> 2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23, 24, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 24, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after appeal to the Board of Patent Appeals and Interferences. Therefore, the appeal has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 01/23/2008 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to the rejection under 35 U.S.C. § 102 have been fully considered but they are not persuasive.

As discussed in the Interview 12/26/2007, in order to distinguish the claimed invention over the prior arts of record, the applicant agreed to define the claimed cut out image data by a wherein clause: *wherein the cut out image data is the actual image of the displayed image*.

In the amendment filed on 01/23/2008, this definition of the cut out image as agreed was not incorporated in claims 23, 27 and 28. Therefore, the rejection under 35 U.S.C. § 102 is continued as in the following manner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 23, 24, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kinjo [USP 6,813,395 B1].**

Regarding claims 23, 27 and 28, Kinjo teaches a method, program and apparatus for retrieving image data (Abstract) comprising:

*a database for registering a plurality of images in a database* (Col. 10 Lines 34-39);

*a display unit for displaying an image registered in the database on a display unit* (FIG. 1, Col. 36-37);

*a designator for designating an image area of the registered image displayed on display unit* (In an attempt at searching for the original image of FIG. 1, the user has arranged a triangle symbolizing the mountain, two ellipses symbolizing the face and the trunk, respectively, of the person, and a vertically rectangle symbolizing the building, with each figure being fitted in the position where it is most likely to be found (Col. 10 Lines 60-67). The Kinjo technique indicates *an image area*, e.g., the face area, *of the registered image displayed on the display unit*, e.g., FIGS. 1 and 3, is *designated by a designator*, e.g., the mouse is used to specify an ellipse representing the face area); and

*a controller for cutting out image data corresponding to the designated image area of the registered image* (FIG. 3 shows the result of extracting predetermined geometric figures, e.g., triangular 31, circles 32 and 33, rectangle 34, from the image in FIG. 1 by the program for the image searching (Col. 10 Lines 45-51). The designated searching pattern is transformed to numerical data and tabulated in the same manner as shown in the following Table 1 (Col. 13 Lines 26-49). The Kinjo teaching as discussed indicates the *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, is extracted or *cut out by a controller*, e.g.,

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the program for the image searching. The *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, *corresponding to the designated image area of the registered image*, e.g., the image region represented by the circle corresponds to the specified ellipse of FIG. 3 representing the face area of FIG. 1) and

*retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database* (FIG. 5 illustrates the process of searching images. The designated searching pattern is transformed to numerical data and tabulated in the same manner as shown in the following Table 1 (Col. 13 Lines 26-49). After transforming the captured designated searching pattern to numerical data, image is read from the database and compared for verification with the designated searching pattern (FIG. 5, Boxes 501-504, Col. 13 Lines 45-54). The comparison is based on a degree of agreement between the captured designated searching patterns and the patterns in the read image using characteristic values (Col. 14 Line 46-Col. 15 Line 20). If the answer is yes based on a check for agreement, the characteristic values are retrieved (FIG. 5, Boxes 504-508, Col. 13 Lines 55-65), and the result of searched images is displayed in a thumbnail layout in the increasing or decreasing order of agreement (Col. 15 Lines 32-34). The Kinjo teaching as discussed indicates the program for the image searching is for *retrieving a desired image data from the database*, e.g., the result of searched images in thumbnail layout, *containing image data*, e.g., the specific figures as in Table 1, *which is identical or analogous to the image data cut out*, e.g., the similarity of the figures in the read image and the captured designated searching figures is based on a degree of agreement),

*wherein the cutout image data corresponds to the actual image of the displayed image* (As discussed above with respect to the cutting out limitation, the *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, is extracted or *cut out* by the program for the image searching. The *image data*, e.g., the image region represented by the circle comprising

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coordinates, size and direction, *corresponding to the actual image of the displayed image*, e.g., the image region represented by the circle corresponds to the the face area of FIG. 1).

Regarding claim 24, Kinjo teaches all of the claimed subject matter as discussed above with respect to claim 23, Kinjo further discloses *the image corresponding to the image area is an image of a face of a person* (As shown in the Kinjo FIG. 3, *the image corresponding to the image area*, e.g., the face area specified by the ellipse, *is an image of a face of a person*).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TIM T. VO can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUNG Q PHAM/  
Primary Examiner  
Art Unit 2168

April 7, 2008